Queck Poh Guan (as administrator of the estate of Sit Kim Boo, deceased) v Quick Awang

HIGH COURT (KOTA BHARU) — CIVIL SUIT NO 371 OF 1984
IDRIS J
5 MAY 1998

Contract *— Consideration — Natural love and affection — Whether transfer of land was gift from deceased mother to son on account of natural love and affection, and thus valid — Whether there was compliance with s 26(a) of the Contracts Act 1950*

The plaintiff is the administrator of the estate of one Sit Kit Boo ('the deceased') while the defendant was the son of the deceased and one of the beneficiaries of the estate. The deceased was the owner of ⅓ portion of a parcel of land ('the land'). A few days before the deceased's death, the latter had executed a transfer of the land to the defendant. The plaintiff alleged that the instrument of transfer of the land was void for non compliance with s 26(a) of the Contracts Act 1950. The defendant on the other hand submitted that the land was transferred to him by the deceased as a gift on account of love and affection and, to give effect thereof, the deceased had executed the instrument of transfer on her own volition and, upon registration of the transfer, he had acquired an indefeasible title to the land.

Held, dismissing the plaintiff's application:

Whether there was any element of love and affection can be gathered from the evidence adduced by both parties and the surrounding circumstances. Having seen the witnesses and heard the entire evidence, the defendant appeared to be a witness of truth and thus his evidence was accepted. The transfer of the land was a gift from the deceased mother to the defendant on account of natural love and affection and is thus valid (see pp 391C and 392D–G).

[Bahasa Malaysia summary

Plaintif adalah pentadbir harta pusaka seorang Sit Kit Boo ('simati') manakala defendan adalah anak lelaki simati and satu daripada benefisiari harta pusaka tersebut. Simati memiliki ⅓ bahagian sebidang tanah ('tanah tersebut'). Beberapa hari sebelum kematian simati, beliau telah melaksanakan pindahmilik tanah tersebut kepada defendan. Plaintif mengata bahawa suratcara pindahmilik tanah tersebut tak sah kerana ketidak patuhan dengan s 26(a) Akta Kontrak 1950. Defendan sebaliknya berhujah bahawa tanah tersebut dipindahmilik kepadanya oleh simati sebagai suatu hadiah atas sebab kasih sayangnya, dan untuk memberi kesan kepadanya, simati telah melaksanakan suratcara pindahmilik tanah dengan kerelaan hatinya sendiri dan selepas pendaftaran pindahmilik tersebut, beliau telah mendapat hakmilik tanah tersebut yang tak boleh disangkal.

A **Diputuskan**, menolak permohonan plaintif:

Sama ada terdapat unsur kasih sayang atau tidak boleh dikumpul dari keterangan yang dikemukakan oleh kedua-dua pihak dan keadaan di sekeliling. Setelah melihat saksi-saksi dan mendengar semua keterangan, defendan adalah merupakan saksi kebenaran dan oleh
B itu keterangannya telah diterima. Pindakmilik tanah tersebut adalah hadiah daripada emaknya yang telah mati kepada defendan atas sebab kasih sayang dan oleh itu adalah sah (lihat ms 391C dan 392D–G).]

C **Notes**

For cases on consideration, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1358–1380.

D **Cases referred to**

Kwan Teck Meng & Ors v Liew Sam Lee [1963] MLJ 333 (refd)
Tan Soh Sim, deceased, Re; Chan Lam Keong & Ors v Tan Saw Keow & Ors [1951] MLJ 21 (refd)

E **Legislation referred to**

Contracts Act 1950 s 26(a)
National Land Code 1965 Form 14A

C Jegathesan (*C Jegathesan*) for the plaintiff.
Teo Poh Oon (*Chew Kok Lian* with him) (*Teo & Chew*) for the defendant.

F

Idris J: The plaintiff is the administrator of the estate of one Sit Kit Boo ('the deceased') who died on 16 April 1982 while the defendant is one of the beneficiaries of the deceased's estate.

In her lifetime, the deceased was known to have possessed of only one
G asset, namely ⅓ portion of that parcel of land known and identified as Lot No 316 Section 2, Bandar Pasir Mas and held under deed of title GM No 4712 ('the ⅓ portion in the land').

It is alleged that six days before the deceased's death, ie on 10 April 1982, the defendant caused the deceased to execute the transfer of ⅓ portion
H in the land to him by falsely representing to her that:

(i) By so executing the document, the deceased was making him a trustee of the property for the other beneficiaries.

(ii) The deceased then was 74 years of age and was old and senile without lucid moments of thought and was incapable of knowing or
I appreciating the true purpose or intent of the document put before her for execution.

(iii) She was not brought before the land administrator for the latter to ascertain and verify if the deceased understood the document on which she was required to affix her thumbprint.

(iv) It was represented to the land administrator by one Wan Othman bin Wan Yusoff the thumbprint purported to be that of the deceased was indeed her thumbprint and he, the said Wan Othman bin Wan Yusoff, has personal perception of the affixing of that thumbprint.

(v) When and how and under whose supervision the thumbprint of the deceased was obtained was never established and that the land administrator without much ado accepted the thumbprint as that of the deceased.

Further or in the alternative, as no consideration being stated in the instrument of transfer (Form 14A), the said instrument of transfer is therefore void for non compliance with s 26(a) of the Contracts Act 1950.

In the event, the plaintiff claims for:

(a) a declaration that the defendant did perpetrate a fraud on the estate of the deceased by obtaining the transfer of the ⅓ portion in the land to his name by fraudulent representation; and/or

(b) a declaration that the instrument of transfer was void for non compliance with s 26(a) of the Contracts Act 1950;

(c) consequently thereafter, for an order that the ⅓ portion in the land be reverted to the estate of the deceased; and

(d) damages for trespass and costs of this suit.

The defendant avers that the ⅓ portion in the land was transferred to him by the deceased as a gift on account of love and affection and, to give effect thereof, the deceased had executed a memorandum of transfer in Form 14A of National Land Code 1965 on her own volition and, upon registration of the said transfer in accordance with the provisions of National Land Code, he had acquired an indefeasible title to the said ⅓ portion in the land.

Evidence was called by both parties and after hearing the evidence, counsel for the plaintiff in his submissions abandoned all allegations of false representations being made to the deceased to secure the transfer of the said ⅓ portion but however proceeded to ground the plaintiff's claim only on the alleged non compliance with s 26(a) of the Contracts Act 1950.

Section 26 of the Contracts Act 1950 reads:

> An agreement made without consideration is void, unless —
>
> (a) it is expressed in writing and registered under the law (if any) for the time being in force for the registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other; ... .

A closer look at the transfer form marked as exh P3 clearly indicates that what was stated as consideration was 'pemberian percuma kepada anak lelaki saya'. It is thus the contention of the plaintiff that in so stating the consideration, the instrument of transfer was void for non compliance with s 26(a) of the Contracts Act 1950.

A It would appear that this s 26(a) provides one of the exceptional cases in which consideration is dispensed with. It allows any agreement expressed in writing and registered under the law for the time being in force (if any) for the registration for such document and is made on account of natural love and affection between the parties standing in a near relation to each other. In the instant case, it is not disputed that the parties stand in a near B relation to each other; the deceased (the transferor) being the mother of the defendant (the transferee). Perhaps, it ought to be noted that there is nothing in the section which requires to be mentioned in the transfer form the existance of love and affection. In the event, I hold that whether or not there exists any element of love and affection it can be gathered from the C evidence adduced by both parties and the surrounding circumstances. In support thereof, I refer to the case of *Kwan Teck Meng & Ors v Liew Sam Lee* [1963] MLJ 333 wherein Gill J (as he then was) said at p 335:

> The transfer dated 27 June 1957 was expresed to be in consideration of a sum of $25,000 alleged to have been paid by the transferees to the transferor. D However, all the transferees have given evidence to say that in fact they paid no money and that the transfer was a gift. I am satisfied on that evidence, and I find as a fact, that this transfer was in consideration of love and affection and was therefore by way of a gift. The transfer dated 7 April 1960 was also expressed to be in consideration of a sum of $10,410 alleged to have been paid by the transferee to the transferors. Here again, I am E satisfied on the evidence and find as a fact that the transfer was in consideration of love and affection and therefore by way of a gift.

In cases where consideration is not stated, the onus of proving consideration or facts which make it unnecessary is on those who plead the validity of the transactions. If they rely on love and affection, they must so prove them F and so too the degree of relationship between the parties if it is not apparent.

In the case of a parent and child, there is no doubt a strong presumption that love and affection exist and any slight evidence of them will suffice, all the more, in some cases, the presumption may be sufficiently strong to afford proof within the meaning of Evidence Act, but nonetheless, such G presumption might diminish if the relationship is less near and would require express evidence to that effect — see the decisions of the Court of Appeal in *Re Tan Soh Sim, deceased; Chan Lam Keong & Ors v Tan Saw Keow & Ors* [1951] MLJ 21.

The evidence adduced by both parties make it clear in my mind that H the defendant had assumed greater responsibility towards the care and well being of his deceased mother as compared to the plaintiff and the other children. Though the plaintiff claims to have visited the mother almost everyday when she was in hospital, it was rather absurd for him not to know the nature of the mother's illness and the reason given is that he was shy to ask the hospital staff. I must confess that I cannot see any I plausible reason for his shyness unless contrary to his claim, he did not even bother to visit the mother. This must be so in the light of the evidence of the defendant when he says the plaintiff was not on talking terms with

the mother and he never met the plaintiff in the hospital. And what is more shocking, the plaintiff did not even attend the mother's funeral.

The plaintiff further says that the land in question was offered by the deceased mother to be transferred to him but he had to decline the offer for fear that he might be alleged to have coaxed or managed to cajole the mother into transfering the land to him to the exclusion of others. I cannot accept this version of his evidence, for if there is any truth in such claim, there's nothing to prevent him from accepting the transfer and at the same time declaring to hold a portion of the land on trust for his brother or sisters if he really cared for them.

However, the plaintiff admits that the defendant stayed 30 feet away from the mother's house and it was the defendant who looked after the mother and in fact the mother used to have her meals in the defendant's house.

On the other hand, the defendant in his evidence informs the court that the transfer of the ⅓ portion in the land to him was for love and affection — in recognition of the care he had showed to the mother. It also appears from the evidence that before his death, the father had separated with the mother and it was the defendant who put up a small house for the mother, and after the death of the father, the mother came to stay with him until her death. The defendant denies that the mother was senile after her discharge from hospital — she was in fact her normal self. The defendant claims the plaintiff only came once to see the mother — that was on the evening prior to the funeral to view the mother's body. The defendant also gives the reason why the transfer to him was effected rather late and how Wan Othman bin Wan Yusoff happened to be the one who identified them to the land administrator.

Having seen the witnesses and heard the entire evidence, I am convinced that the defendant is a witness of truth and I accept his evidence as opposed to that of the plaintiff's whose evidence leaves much to be desired. It is my finding of fact that the transfer of the ⅓ portion in the land was a gift from the mother to the defendant on account of natural love and affection. In view of the foregoing, I hold that the transfer from the deceased mother to the defendant is valid and I therefore dismiss the plaintiff's claims with costs.

Plaintiff's claims dismissed with costs.

Reported by Loo Lai Mee